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Matters related to the implementation of the Convention: round table 2

National implementation and monitoring

Note by the Secretariat

The present document was prepared by the Secretariat on the basis of contributions[1] of experts received through the Bureau of the Conference of States Parties to facilitate the discussion of round table 2 on the theme "National implementation and monitoring", to be held at the seventh session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities.

* "CRPD/CSP/2014/1."

[1] Contributions were also received from the Office of the United Nations High Commissioner for Human Rights, including information contained in its thematic study on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities (A/HRC/13/29).

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Introduction

1. In accordance with article 4 of the Convention on the Rights of Persons with Disabilities, States parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind. To that end, States parties are required to adopt all appropri egislative, administrative and other measures for the implementation of the Convention. In all human rights treaties, the implementation obligation is closely linked to a monitoring component. The monitoring of human rights treaties is needed to assess not only whether measures to implement the treaty are adopted and applied but also to evaluate their results and therefore provide feedback for implementation. Monitoring mechanisms foster accountability and, over the long term, strengthen the capacity of contracting parties to treaties to fulfil their commitments and obligations.

2. The Convention provides for monitoring of its implementation both at the international and national levels. The present document focuses on national implementation and monitoring and provides an in-depth review of the Convention's relevant provisions in that regard.

Implementation at the national level

3. In accordance with article 33 of the Convention, States parties are required to put in place structures for the implementation and monitoring of the Convention at the national level. The inclusion of a norm detailing national implementation and monitoring structures and their functions at the national level is unprecedented in a human rights treaty.[2]

4. The emphasis in article 33, paragraph 1, is on domestic implementation, with the responsibility placed with Governments. In order to avoid uncoordinated action or the blurring of that responsibility across government sectors, States are required to designate one or more focal points within government for matters relating to the implementation of the Convention and to consider the establishment of a coordination mechanism.

5. In accordance with article 33, paragraph 2, States parties are required to maintain, strengthen, designate or establish a framework, including an independent entity, to protect, promote and monitor the implementation of the Convention. The mechanism must function on the basis of the principles relating to the status and functioning of national institutions for the protection and promotion of human rights (known as the Paris Principles) (see General Assembly resolution 48/134, annex).

6. In accordance with article 33, paragraph 3, civil society, and persons with disabilities and their respective organizations in particular, is required, to be involved and to participate fully in the monitoring process, in line with the principle

[2] The partial exception to this is the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires States parties to set up a national preventive mechanism. Further information on the Optional Protocol is available from the website of the Office of the United Nations High Commissioner for Human rights at www.ohchr.org/EN/Pages/WelcomePage.aspx.

relating to the participation of persons with disabilities, which permeates the Convention.

7. The incorporation of provisions on national implementation and monitoring in the Convention has been commended as a measure to consolidate the institutional preconditions necessary to ensuring its realization at the domestic level.[3]

Focal point(s)

8. The Convention does not prescribe either the form or the specific function of the focal point(s). In some cases, States parties may already have in place relevant bodies or mechanisms at the time of ratification or access to the Convention. In such cases, existing mandates and resource allocation will need to be revised to include overseeing the implementation of the Convention and to coordinate efforts among various sectors at the local, regional and national/federal levels.

9. Although different systems of government may favour different forms or structures for their focal points, some key general considerations may be taken into account.

10. For the effective implementation of the Convention, a two-pronged approach may be considered, with the designation of an overall focal point, as well as focal points serving at the level of each or most government departments/ministries. Such an approach encourages the mainstreaming of the monitoring responsibility across government sectors in recognition that the full and effective implementation of the Convention requires action by most, if not all, government ministries. The mandate of the ministry focal points should include promoting awareness of the Convention within the ministry, participation in the development of an action plan on the Convention and monitoring and reporting on its implementation within functional lines.

11. At the same time, the appointment of one overall focal point would respond to the need to ensure general coordination, oversight and promotion in respect of implementation. In setting out the responsibilities of the central focal point, the following considerations may be of relevance:

(a) The Convention endorses and represents a paradigm shift in the understanding of disability, from approaches that have a medical and charity-based focus to approaches that are based on human rights and have a social dimension.[4] The shift should be reflected in the choice of the government focal point(s), with preference given to ministries responsible for human rights, social affairs and justice. Designation of the ministries of health or of welfare and labour as the government focal point should be avoided, as should the designation of special education departments within ministries of education;

(b) Implementation of the Convention requires support at the most senior level of government, and focal points should, accordingly, be located at the highest

[3] See G. Quinn, "Resisting the 'temptation of elegance': can the Convention on the Rights of Persons with Disabilities socialize States to right behaviour?", in *The United Nations Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives*, O.M. Arnardóttir and G. Quinn, eds. (Leiden, Martinus Nijhoff Publishers, 2009).

[4] In paragraph 1(e) of the preamble, the Convention recognizes that disability is an evolving concept and results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society.

possible level, such as in the Office of the President or of the Prime Minister, or within the Cabinet. Not having ministers in charge of disability as part of the Cabinet might hamper the robustness of the focal point structure;

(c) The mandate of the focal point should clearly focus on developing and coordinating a coherent national policy on the Convention. As such, the focal point should promote, guide, inform and advise the Government on matters related to the implementation of the Convention. The mandate of the focal point could also include the coordination of government action on the Convention in relation to reporting, monitoring, awareness-raising and liaising with the independent monitoring framework designated under article 33, paragraph 2. Furthermore, the focal point should be well placed to facilitate a channel of communication between civil society and organizations of persons with disabilities and the Government on matters related to implementation;

(d) The focal point should be adequately supported in terms of technical staff and resources. Therefore, identifying a support structure for the focal point within a large ministry, so as to take advantage of economies of scale, may be helpful. In such cases, it may be useful to explicitly recognize the independence of the focal point structure from the parent ministry.

12. Article 33, paragraph 1, should be considered not only in respect of addressing the issue of functional focal points in concerned ministries but also in respect of its relevance to multiple levels of government, so that disability focal points may be designated at the local, regional and national/federal levels.

Coordination mechanisms

13. Under article 33, paragraph 1, States parties are requested to give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related actions and processes in different sectors and at different levels.

14. Several States have coordination mechanisms on disability issues in place, in some cases predating the ratification of the Convention. Although arrangements differ, coordinating committees often include representatives from various ministries and organizations of persons with disabilities as well as other civil society organizations, the private sector and trade unions. Their mandates often focus on policy development, the promotion of dialogue in the disability field, awareness-raising and similar functions. Coordination committees often have a secretariat, in several cases housed within ministries of social welfare.

15. The effectiveness of existing coordination mechanisms is often considered to be low by organizations of persons with disabilities (see A/HRC/13/29). Frequently cited obstacles to their success include the lack of a clear legal mandate, a lack of resources, the limited involvement of persons with disabilities or the exclusion of persons with certain types of disabilities. Furthermore, laws establishing coordinating structures, including, in some cases, coordinating frameworks established by States upon ratification of the Convention, have often not been operationalized through the adoption of rules and regulations, with the result that such structures are in reality not operational or functioning.

16. In instances where more than one focal point is appointed, it would seem appropriate that such focal points participate in the coordination mechanism. The

mechanism may be chaired by the focal point tasked with the central responsibility of implementing the Convention. Through participation in the mechanism, government agencies will be able to focus their activities and policy development on areas where they have an added value; avoid duplication; and make the best use of limited resources.

Monitoring framework

17. In accordance with article 33, paragraph 2, States are required to maintain, strengthen, designate or establish at the national level a framework that includes one or more independent mechanisms, to promote, protect and monitor implementation of the Convention. The Convention specifies that when designating or establishing the independent mechanism(s) to be included in the framework, States parties are to take into account the Paris Principles.

18. Article 33 does not prescribe a specific organizational form for the national monitoring framework, and States parties are free to determine the appropriate structure according to their political and organizational context. Suitable entities are already in place in some States. In others, the implementation of article 33, paragraph 2, requires the establishment of a new entity or the transformation of existing entities.

19. The experience of States parties that have taken formal steps towards the implementation of the monitoring framework shows that some of them have assigned the function to a single-entity framework, while others have assigned the task to multiple entities. Whatever the organizational structure, three key requirements need to be given effect in the monitoring framework:

(a) The framework must include one or more independent mechanisms that take into account the Paris Principles. This does not mean that only entities complying with the Paris Principles should be part of the framework; rather, it means that at least one mechanism that is established and functions on the basis of the Paris Principles must be included;

(b) The framework must be capable of adequately promoting, protecting and monitoring the implementation of the Convention. This means that the framework needs to be given an adequate mandate and the institutional capacity required to effectively perform its functions;

(c) Civil society, and persons with disabilities and their representative organizations in particular, need to be involved and fully participate in the monitoring process.

The independent mechanism and the Paris Principles

20. The Paris Principles identify four main characteristics that should apply to the independent mechanisms under article 33 and that should be considered to apply to the overall framework:

(a) **Competence and responsibilities**. National human rights institutions and, in the context of article 33, the independent mechanism established under the Convention, should be given as broad a mandate as possible, clearly set forth in a constitutional or legislative text. Responsibilities should include reporting to the Government on human rights matters; harmonizing national legislation, regulations

and practices with international human rights standards; encouraging the ratification of international human rights instruments; contributing to the reports that States are required to submit to United Nations bodies and committees; cooperating with international, regional and other national human rights institutions; assisting in human rights education; and publicizing and promoting human rights;

(b) **Composition, independence and pluralism**. Independence is guaranteed through composition, which should ensure the pluralist representation of social forces in the country; sufficient funding and infrastructure, not to be subject to financial control by government; and appointment of the members of a national institution by the official act that establishes the mandate;

(c) **Methods of operation**. The Principles require that a national human rights institution and the independent framework in article 33 of the Convention should freely consider any questions falling within their competence from whatever source they see fit. The Principles also stipulate that national institutions should maintain consultations with the other bodies responsible for human rights issues and with non-governmental organizations;

(d) **Status of institutions with quasi-jurisdictional competence**. Such institutions are authorized to hear and consider complaints and petitions. In the exercise of those functions, the institutions may seek conciliation or issue binding decisions, hear any complaints or petitions or transmit them, inform the party of available remedies and promote access to them.

21. In a 2009 thematic study on national mechanisms for monitoring the Convention, the Office of the United Nations High Commissioner for Human Rights found that some of the entities considered by States in the context of the establishment of the monitoring framework did not meet the above-mentioned criteria for designation as independent mechanisms. Insufficient guarantees of independence, for example, would disqualify Government commissions and some of the national observatories on disabilities that had been established in some countries. Similar concerns have been raised in respect of national disability secretariats that have included government representatives on their executive boards and in national disability councils. Non-governmental organizations, by definition, have generally enjoyed great structural independence from executive government. However, the degree of independence of a non-governmental organization in reality can vary, and generally is not legally guaranteed.

22. The Committee on the Rights of Persons with Disabilities has recommended, in its concluding observations to States parties, to adopt measures to set up independent monitoring mechanisms that are fully in compliance with the Paris Principles; to provide adequate staffing and budget resources to those mechanisms; and to allow them to administer that budget autonomously.

Role of national human rights institutions

23. Existing national human rights institutions have the potential to be designated as independent mechanisms performing the functions covered under article 33, paragraph 2; in fact, it has been said that national human rights institutions play a significant role with respect to the tasks set out under the article. Notwithstanding existing differences, the majority of existing national human rights institutions can

be grouped together in three broad categories: human rights commissions, ombudsmen and institutes.

24. The Convention is the first human rights convention to include an explicit role for national human rights institutions in promoting, protecting and monitoring the implementation of a treaty at the national level. Treaty bodies monitoring other human rights conventions have, however, often interpreted the general obligation to adopt all measures necessary to give effect to the treaty to include the establishment of a national human rights institution. In particular, the Committee on the Rights of the Child in general comment No. 2, on the role of independent national human rights institutions in the promotion and protection of the rights of the child, has clarified that it considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and that the role of national human rights institutions is to monitor independently the State's compliance and progress towards implementation of the Convention and to do all it can to ensure full respect for children's rights.

25. In fact, several national human rights institutions have long-established records of engagement on the theme of disability rights, which derive from their broad human rights mandate and often precede the ratification of the Convention in their respective countries.

26. Notwithstanding such wide engagement of national human rights institutions in the rights of persons with disabilities, few States have taken formal steps to designate their national human rights institutions as the independent mechanism of the framework.

27. The process of formally designating a national human rights institution can reflect the adequacy of the mandate of the institution for the purpose of article 33, which, in some cases, might reveal opportunities for strengthening compliance with the Paris Principles.

28. In other cases, a review of how persons with disabilities participate in existing national human rights institutions can highlight the need to revise the composition of the institution and strengthen pluralism.

29. It should also be noted that the designation of a national human rights institution as the independent mechanism will most likely require internal structural changes and that additional financial and human resources will almost always be required.

30. Where no entities exist at the national level in line with the Paris Principles, consideration should be given to establishing such an institution.

Mechanisms for national monitoring

31. Article 33, paragraph 2, also foresees the possibility that more than one independent mechanism might be appointed in the framework, as appropriate, with the effect that States would in fact establish a "mechanism of mechanisms" to promote, protect and monitor implementation.

32. This possibility seems to address States parties with multiple levels of government, such as federal States and analogous entities.

33. Based on the particular constitutional structure and other political and geographic considerations in a State, the independent mechanism of a federal State could arguably be either a unified federal body or a system with multiple bodies. Designation could come from either the federal Government and/or a devolved administration within the limits of its territorial jurisdiction and competence. In all cases, it should be remembered that ultimate responsibility for the implementation of the treaty lies at the State party level.

34. Article 33, paragraph 2, appears also to allow States to designate multiple mechanisms by thematic divisions of responsibility so that, conceivably, a plurality of such mechanisms might be engaged depending on the function to be performed.

Mechanisms for protecting and promoting rights and monitoring implementation

35. Promotion of the implementation of the Convention covers a broad range of activities, including not only awareness-raising activities, as highlighted in article 8 of the Convention, but also a more strategic engagement to advance implementation. This could include scrutiny for compliance of existing national legislation, regulations and practices, draft bills and other proposals, in order to ensure consistency with the requirements of the Convention; and the provision of technical advice to public authorities or other agencies in construing and applying the Convention, including on the basis of observations and recommendations and general comments issued by the Committee on the Rights of Persons with Disabilities.

36. The Conference of States Parties is a mechanism, established in accordance with article 40 of the Convention, to consider any matter with regard to the implementation of the Convention. Since its establishment in 2008, the Conference of States Parties has gradually developed into an important venue and forum to promote the implementation of the Convention, especially through the exchange of experience and good practices among States parties, the agencies of the United Nations system and civil society stakeholders. There still exists a need and opportunity to further strengthen the Conference of States Parties as a mechanism and to explore its great potential to promote implementation.

37. Protection under the Convention can include a broad range of different activities, including the investigation and examination of individual and group complaints, taking cases to court, conducting inquiries and issuing reports.

38. Monitoring the implementation of the Convention can be approached in a number of ways, including through the assessment of progress, stagnation or retrogression in the enjoyment of rights over a certain period of time. The development of indicators and benchmarks is a particularly effective way to monitor implementation, particularly with regard to the progressive realization of economic, social and cultural rights, as set out in the Convention.

39. Another approach with which many human rights institutions are familiar is that of monitoring human rights violations, a common methodology of which to collect or maintain records of the complaints filed by alleged victims before relevant judicial or quasi-judicial complaints mechanisms. Considering the specific barriers persons with disabilities have traditionally faced in accessing justice, such data can be integrated with information on violations provided by other sources, such as civil

society organizations and organizations of persons with disabilities participating in the framework.

Participation of civil society

40. Article 33, paragraph 3, requires the involvement and full participation of civil society, in particular of persons with disabilities and their representative organizations in the monitoring process. That requirement is consistent with the general principle concerning the participation of persons with disabilities, as set out in the article 3 and article 4, paragraph 3, which refer to close consultation with and the active involvement of persons with disabilities through their representative organizations in the development and implementation of legislation and policies to implement the Convention and in all decision-making processes relating to persons with disabilities.

41. The requirement to involve persons with disabilities applies to all parts of article 33 and not only to the monitoring process. In that sense, any consultation on the establishment of the monitoring framework should naturally involve representative organizations of persons with disabilities.

42. Article 33, paragraph 3, seems to refer to both the direct participation of persons with disabilities in the monitoring process and their indirect participation, through representative organizations. The direct participation of persons with disabilities in the monitoring process can occur, for example, by having experts who are persons with disabilities participate in the work of the monitoring framework. Some national human rights institutions include commissioners who are persons with disabilities or include persons with disabilities on their executive boards.

43. At the same time, it is important to consider the requirement that organizations representing persons with disabilities should be included in the monitoring process. It is advisable that an open discussion to be held with organizations of persons with disabilities in order to identify the criteria on which organizations can be considered to be representative of such constituencies. In many cases, there may be a preference for national umbrella organizations.

44. The potential to have national human rights institutions serve as independent mechanisms and organizations of persons with disabilities as participating entities of the monitoring framework should be explored.

Key questions for consideration

45. The following questions may be considered as a reference in the discussion of round table 2 on this issue:

(a) What measures have States parties adopted in order to ensure that government agencies responsible for the implementation of the Convention are provided with effective institutional arrangements and resources that include a focal point system and a coordination structure?

(b) What measures have been adopted by States parties to secure a broad mandate, independence, pluralistic composition and adequate resources for an effective monitoring framework?

(c) What measures are envisaged or have already been taken to establish or strengthen entities that are compliant with the Paris Principles, for the purposes set out in paragraph 2 of article 33 of the Convention?

(d) What measures have or should be taken to ensure that persons with disabilities and their representative organizations take part in monitoring processes, as well as in any other decision-making processes that concerns them?

(e) How can the Conference of States parties be strengthened further as a mechanism and how can its potential in promoting the implementation of the Convention be explored?